

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROBERT L. SCHULZ,)	
)	
Plaintiff,)	8:05CV397
)	
vs.)	MEMORANDUM AND ORDER
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 1, the Motion to Quash IRS Summons filed by the plaintiff, Robert L. Schulz; and filing no. 8, the United States' Opposition to Motion to Quash filed by the defendants, the United States of America, et al. The plaintiff moves to quash a third-party summons issued by the Internal Revenue Service ("IRS") to PayPal, a Nebraska corporation, as part of an IRS determination of the plaintiff's liability for federal income taxes. See generally United States v. v. Norwood, 420 F.3d 888, 892 (8th Cir. 2005): "Section 7602 of Title 26 authorizes the IRS to summon certain persons and data '[f]or the purpose of ... determining the liability of any person for any internal revenue tax.'"

In filing no. 8, the United States asserts, among other arguments, that the above-entitled case should be dismissed for insufficiency of process, insufficiency of service of process, and therefore, lack of jurisdiction over the defendants. See Fed. R. Civ. P. 12(b)(4) and (5). Federal Rule of Civil Procedure 4(i) regarding "[s]erving the United States, Its Agencies, Corporations, Officers, or Employees," states:

(1) Service upon the United States shall be effected

(A) **by delivering a copy of the summons and of the complaint** to the

United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney

and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the **Attorney General of the United States** at Washington, District of Columbia,

and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to **the officer or agency**.

(Emphasis added.)

The defendants are correct that the plaintiff did not comply with Fed. R. Civ. P. 4(i). Therefore, lacking jurisdiction over the United States, the court denies the plaintiff's Motion to Quash and dismisses this case without prejudice. Filing no. 1 is denied, and filing no. 8 is granted. A separate judgment will be entered accordingly.

SO ORDERED.

DATED this 23rd day of November, 2005.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge